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C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 002126

SIPDIS

DEPT FOR EAP/CM AND DRL

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TAGS: [PGOV PHUM MC](#)

SUBJECT: MACAU ARTICLE 23: DELAYING TACTICS FROM AN
OUTNUMBERED OPPOSITION

REF: (A) HONG KONG 2109 (B) OSC CPP20081031701002

Classified By: Consul General Joe Donovan for reasons 1.4 (b) and (d).

11. (C) Summary and comment: Some democratic activists, journalists, and a few lawyers oppose the draft Article 23 national security legislation proposed by the Macau government October 22 (reftels). Bill opponents are pushing first to extend the consultation period from 40 to 90 days, hoping to buy time to build a vocal public opposition. Longer term, some are arguing the bill should be put off for now so the government can address more pressing concerns. With regard to the text, opponents are seeking clearer definition of how information is declared secret, a "public interest" defense for journalists reporting on sensitive issues, and elimination of the vaguely-worded clause criminalizing "preparatory acts". The middle class and university students are criticizing the bill anonymously via call-in radio and TV shows and the internet, but there is no mass opposition to the bill. Unlike Hong Kong's Article 23 debate in 2002-3, there is also no organized opposition from the legal profession. With a compliant legislative majority and a largely apathetic public, the government has the means to pass almost any national security bill it chooses. The only real constraints on the Macau government's actions are its public commitment to consultation and the possibility that Beijing desires a smooth consensus in Macau to ease the eventual passage of Hong Kong's own Article 23 legislation. End summary and comment.

Buying Time...

12. (C) In a petition to the Macau government (MSARG) in early November, the New Macau Association (NMA), Macau's leading democratic political association, requested the MSARG extend the consultation period on the draft Article 23 bill to ninety days from the forty initially set (October 22 - November 30). Officially, NMA and other opponents of the current draft are requesting the extension because of the importance of the bill and the need to revise the text. In addition, University of Macau Government and Public Administration Professor Eilo Yu told us he believes the NMA is trying to buy time to build up public support for its proposed changes. If nothing else, a delay might also give the general public itself time to develop a better understanding of the bill. A late October poll conducted by the Macau General Union of Neighbors Associations indicated 60 percent of the public had "no clear understanding" of the draft law. Perhaps adding to the confusion, Macau Inter-University Institute (IIUM) instructor Martin Chung (protect) told us he had heard MSARG officials in a public forum making claims about the scope and applicability of the law which are not supported by the actual text.

...or Putting Off

13. (C) At an IIUM-hosted forum on the draft bill, pro-democracy lawmaker Jose Pereira Coutinho and "Ponto Final" journalist Isabel de Castro both questioned whether Macau should be considering Article 23 legislation at this time. Coutinho questioned the urgency on two grounds. First, he stated there had not been an incident related to national security, sedition or state secrets in Macau since the handover. Second, he asserted that Macau Basic Law Article 27 requires the MSARG to pass laws on trade unions and the right to strike. Given Macau's current problems with wages, unemployment and imported labor, Coutinho said, these bills should have priority over Article 23. (Note: Article 27 states that "Macau residents shall have...the right and freedom to form and join trade unions, and to strike." There is no "shall enact laws" language similar to Article 23's. End note.) While conventional wisdom holds that Chief Executive Edmund Ho is tabling the legislation now because, with a year left in his final term, he can avoid political fallout, de Castro argues this is why the bill should not be considered at this time. With so many other bills under consideration and a short time left in Ho's term, she feels Article 23 legislation will not receive the attention it merits. Separately, NMA Legislative Assembly (LA) Member Au Kam-san suggested to us that he would prefer to have the government on record with a timetable by which Macau will move to elections by universal suffrage before passing Article 23 legislation (unlike Hong Kong, Macau's Basic Law does not specify elections by universal suffrage as a goal).

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Concrete Changes

14. (C) Macau lawyer Nuno Lima Bastos (who took part in the IIUM seminar), Civic Power founder Agnes Lam, and NMA's Au, among others, all felt Article 9's vague statements about "preparatory acts" should be stricken from the draft. All also felt that issues regarding classifying information as "secret" require greater clarity. NMA's petition raised both these issues, advocating that there be a standard of intentionality in prosecuting those who reveal state secrets. Both the NMA and Lam also called for a clear statement of a "public interest" defense for journalists, which NMA defined in its petition as "if the public interest in disclosure of official information overrides the damage it causes."

15. (C) The MSARG has an interactive website for comments on the draft law, but some contacts questioned whether proposed changes would be accepted. Lima Bastos told the IIUM seminar he had heard rumors that the LA would receive the formal bill with the understanding the text was not to be touched. On the other hand, Macau Post Daily Editor Harald Bruning (protect) told us he thinks the MSARG is open to modifications to the draft, in particular the removal or modification of Article 9 on preparatory acts. Au told us that NMA is planning to present amendments when the bill is formally submitted to the LA. He believes that Beijing recognizes the importance of getting a consensus law in Macau to winning passage of Article 23 legislation in Hong Kong. In terms of numbers, the MSARG has enough reliable supporters in the LA to easily pass any bill it chooses.

Out Among the Masses

16. (C) University of Macau Professors Eilo Yu and Liu Bolong both believe many in Macau's middle class are against the current draft, but individuals are only willing to voice their views through relatively anonymous call-in radio and TV programs. Liu told us students are also active online, but may not join public events opposing Article 23 legislation.

Many contacts lament the lack of a debate led by the legal profession, which in Hong Kong proved as important in many ways as the public protests. Our interlocutors believe that the bar in Macau, which is still largely Portuguese, is unwilling to enter the fray publicly, although individuals may offer opinions openly or through their contacts. Lima Bastos mentioned at the seminar that, although he is not an expert on the issues (he is legal adviser to the Macau Postal Service), he was speaking out because other lawyers with more expertise had not come forward.

DONOVAN